LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 30 1966
JOHN F. DAVIS, CLERK

In the

SUPREME COURT of the UNITED STATES

October Term, 1965

No. 1073

DRIVERS, WAREHOUSE AND DAIRY EMPLOYEES UNION LOCAL NO. 75, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRONSON C. LA FOLLETTE
Attorney General of Wisconsin

BEATRICE LAMPERT
Assistant Attorney General

Attorneys for Respondent

State Capitol
Madison, Wisconsin

INDEX

PAGE

Citations 1

Jurisdiction 2

Question Involved 3

Statement of Facts 4

Argument 4

Conclusion 8

Cases Cited

Dowd Box Co. v. Courtney, (1962) 368 U. S. 502, 7 L. ed. 2d 483, 82 S. Ct. 519 5

Teamsters Local v. Lucas Flour Co., (1961) 369 U. S. 95, 85 S. Ct. 617, 13 L. ed. 2d 584 5

Statutes Cited

28 U. S. C. § 1257 (3) 2

29 U. S. C. § 185 ..... 5, 7

Labor Management Relations Act, 1947, 301 (a) 3, 7

Text

PAGE

1 Legislative History of Labor Management Relations Act, 1947, p. 421 5-6

In the

SUPREME COURT of the UNITED STATES

October Term, 1965

No. .....

DRIVERS, WAREHOUSE AND DAIRY EMPLOYEES UNION LOCAL NO. 75, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CITATIONS

The judgment of the Wisconsin Supreme Court which petitioner seeks to have reviewed is reported in 29 Wis. 2d 272 and 138 N. W. 2d 180.

JURISDICTION

The petition for certiorari is based on 28 U. S. C. § 1257 (3). Since there is no question of validity of a treaty or statute of the United States, or of a state statute, the existence of jurisdiction must be determined on the issue wheher the state has denied "any title, right, privilege or immunity" claimed under "* * * Statutes of * * * the United States."

QUESTION INVOLVED

Does sec. 301 (a) of the Labor Management Relations Act, 1947, guarantee to a plaintiff the right to enforce a collective bargaining contract in a state tribunal?*

*The petitioner has, we believe, by-passed the issue upon which jurisdiction depends, to reach the merits of the case; i.e., how federal law should be applied to the facts, assuming appropriate proof had been made in a federal court.

It is respectfully submitted that argument upon the merits is appropriate only after it is shown that there has been deprivation of a federally guaranteed right or privilege.

STATEMENT OF FACTS

The petitioner elected to seek a remedy before a state tribunal for alleged violation of a collective bargaining agreement by the Menominee Sugar Company and the Wisconsin Sugar Company.

The agreement was between the petitioner and the Menominee Sugar Company, which had discontinued production more than six months before the alleged violation. The other company was not a signatory to the agreement. The state tribunal found that the latter was neither a successor nor assign of the Menominee Company and was not bound by the agreement (Petitioner's Appendix pp. 2, 36-37); and, accordingly, that the Wisconsin Sugar Company had not violated a collective bargaining contract (Petitioner's Appendix, p. 41).

ARGUMENT

In limiting argument to the issue whether a federal right was denied by failure to accord an affirmative remedy to a suitor who elected procedure before a state tribunal rather than in federal court, the respondent does not imply that the result in the state tribunal was inconsistent with federal substantive law.* That question cannot be reached until the jurisdictional prerequisite has been met, of showing that the failure to accord an affirmative remedy deprives the petitioner of some federally guaranteed right.

---

*The decision of the state tribunal was reached by applying, we believe correctly, principles of law pronounced by this court.

Whatever right the petitioner may have under statutes of the United States stems from sec. 301 of the Labor Management Relations Act (29 U. S. C. § 185), which gives to district courts of the United States jurisdiction over suits for violation of contracts between an employer and a labor organization.

It was held in *Dowd Box Co. v. Courtney,* (1962) 368 U. S. 502, 7 L. ed. 2d 483, 82 S. Ct. 519 that this remedy was not intended to displace, but rather to supplement (*loc. cit.* 368 U. S. 502), state court jurisdiction and that "Congress deliberately chose to leave the enforcement of collective agreements to the usual processes of the law" (*loc. cit.* 368 U. S. 502).

Teamsters Local v. Lucas Flour Co., (1961) 369 U. S. 95, 85 S. Ct. 617, 13 L. ed. 2d 584, held that in the exercise of concurrent jurisdiction doctrines of federal labor law must "prevail over inconsistent local rules" (*loc. cit.* 369 U. S. 104).

Nothing in either case indicated that if a party elects, instead of proceeding in a district court of the United States as authorized by the statute last above cited, to resort to a state tribunal, federal statutes entitle him to an affirmative remedy.

The primary reason why the Congress provided a remedy before United States District courts for violation of collective bargaining contracts was to fill an area where states no *not* provide a remedy or provide only an inadequate one.

Senate Report #105 on S. 1126, 1 Legislative History of the Labor Management Relations Act, 1947, p. 421,

explained that the reason for giving jurisdiction to federal courts to enforce collective agreements was the difficulty of obtaining effective remedies in state tribunals:

> "* * * We feel that the aggrieved party should * * * have a right of action in the Federal courts. Such a policy is completely in accord with the purpose of the Wagner Act which the Supreme Court declared was 'to compel employers to bargain collectively with their employees to the end that an employment contract, binding on both parties, should be made' (*H. J. Heinz & Co.*, 311 U. S. 514).
>
> "The laws of many States make it difficult to sue effectively and to recover a judgment against an unincorporated labor union. It is difficult to reach the funds of a union to satisfy a judgment against it. In some States it is necessary to serve all the members before an action can be maintained against the union. This is an almost impossible process. * * *"

Congress elected to try to fill the inadequacies by making *federal* courts available to suitors where procedure in state courts was deemed insufficient to meet their needs; but made no effort to compel *state* tribunals to grant a remedy in every case.

It is conceded that if a state provides an *affirmative* remedy for violation of a collective bargaining agreement, that remedy may not be inconsistent with federal substantive law. We do not have here a case in which a state tribunal has flouted or disregarded principles laid down by federal courts. The state tribunal expressly recognized federal law and concluded that the plaintiff was not entitled to a remedy on the facts shown.

There is the possibility in any type of litigation that one court or jury may reach a different result on similar facts than would another. Surely it was not intended by statutes providing certiorari to this court that a case should be reviewed to determine whether a litigant might have obtained a more favorable result if he had resorted to a different tribunal.

This court cannot review every alleged error in the many tribunals throughout the country. The record should establish clear deprivation of a federally guaranteed right to warrant review, rather than mere ground for difference of opinion.

The remedy in federal courts is also restricted by section 301 (a) of Labor Management Relations Act 1947 to "an industry affecting commerce" (29 U. S. C. § 185). There is no proof shown in the record of this case to establish that the industry involved met such condition.

CONCLUSION

It is respectfully submitted that the petitioner which, by its own election, sought relief before a state tribunal, has not been deprived of any right given by federal statute when the relief sought is denied after full and fair hearing.

Respectfully submitted,

BRONSON C. LA FOLLETTE
Attorney General of Wisconsin

BEATRICE LAMPERT
Assistant Attorney General

Attorneys for Respondent

State Capitol
Madison, Wisconsin